IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.987 OF 2005 ALONGWITH CRIMINAL APPEAL NOS. 988/2005, 989/2005, 990/ 2005, 991/2005 992/2005, 993/2005, 994/2005, 995/2005, 996/2005

Shree Sinnar Vyapari Sahakari
Bank Limited. .....Appellant.

V/s

The State of Maharashtra .....Respondent.

Mr. P.B. Shah for the appellant.

Mr. Y.M. Nakhwa, APP for the State.

CORAM: V.M. KANADE, J.
DATE : 6th September, 2007

P.C.:

1. Heard the learned Counsel appearing on behalf of the appellant and the learned APP appearing on behalf of the State.

2. Appellant, by these appeals, is challenging the order passed by Trial Court on its application for return of muddemal property whereby the learned Judge of the Trial Court by impugned order was pleased to observe that in view of the order passed in the criminal trial by his predecessor, it was not possible to pass a separate order and review the order passed by the Trial Court.

3. Brief facts for the purpose of deciding these appeals are as

under:-

4. Appellant is the Bank and, at certain point of time, some of its employees illegally and fraudulently misappropriated the gold and currency notes which were pledged by its members and others as security towards the loan which was taken by these members. Thereafter, a charge-sheet was filed against all these employees and they were tried by the Trial Court for various offences. During the course of investigation, the Investigating Officer had seized muddemal from the accused. However, in the trial, all the accused were acquitted and none of the accused made any application for return of the muddemal property. The Trial Court, however, while acquitting the accused in the said judgment and order observed that since none of the accused had filed an application for return of the property, muddemal should be forward to the Government Mint. Thereafter, the Bank preferred an application for return of the property. In the said application, it was stated that the Bank had, after the gold and currency was misappropriated by its employees, repaid the market value of the gold to its members who had pledged it with the Bank and, therefore, the said gold ornaments and currency notes which were seized during the investigation rightfully belonged to the Bank. The learned judge of the Trial Court, however, felt that, since, while disposing the criminal case, his predecessor had directed that the gold should be handed over to Government Mint, it was not possible for him to review the same order. Being aggrieved by the said order, therefore, these appeals have been filed.

5. All these appeals can be disposed of by a common order since in

all these appeals appellant - Bank has filed an application for return of the property and all accused in these cases were employees of the Bank and the market value of gold ornaments which were pledged by its members was repaid by the Bank. This is an admitted position.

6. In my view, Trial Court erred in rejecting the said application particularly when in paras 30 and 31 of the Judgment in Regular Criminal Case No. 95 of 2001, the Trial Court has observed as under:-

> "30. I scrupulously go through all the record of this case. On the very face of general muddemal (vide G.M.R. No.9/89), it can be safely read that, it belongs to the Sinnar Vyapari Sahakari Bank Ltd., Sinnar. Hence, that Bank deserves the general muddemal to be returned to it. However, as far as the valuable muddemal (vide V.M.R. No.2/89) is concerned, on its face, it is not at all mentioned whom it belongs to. Throughout the trail it is nowhere established that, from whose custody the valuable muddemal is recovered and seized and to whom it belongs. Even since after commission of the alleged offence still today i.e. within these more than 32 long years, no one has ever came before and applied to the Court in respect of the

> valuable muddemal. Hence, valuable muddemal except currency notes requires to be forwarded to the Government Mint and I order accordingly."
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> "31. From one of the various panchanamas on record of this Court, which even remains not proved in the strict legal sense, nevertheless it reveals that, some currency notes and coins were recovered and seized out of the possession of Surendra (accused no.1). However, till today the accused is not claiming those currency notes and coins allegedly recovered and seized on his person. Hence, it are required to be forwarded to the concerned Government Treasury."

Thus, it is clear that general muddemal vide G.M.R. No.9/89 and valuable muddemal vide V.M.R. 2/89 has not been claimed by any one and, therefore, the Court has given a finding that it belonged to the appellant - Bank. Trial Court, having made this observation, merely because no application was made for return of the property, it could not have rejected the application. Further, the order which is passed on application for return of the property does not amount to reviewing of the judgment and order passed by the Trial Court and, therefore, it is not hit by the provisions of section 362 of the Criminal

Procedure Code. In the present case, admitted position is that the Bank's property was misappropriated by its employees and the Bank, in turn, had returned or repaid the market value of the said gold ornaments to the persons who had pledged them with the Bank. Admittedly, none of the accused has filed any application for return of the property.

7. Under the circumstances, impugned order is set aside. The general muddemal viz. G.M.R. No. 9/89 and valueable muddemal viz. V.M.R. No. 2/89 in Regular Criminal Case No.95 of 2001 and similarly other muddemal property in the respective cases should be returned to the appellant - Bank expeditiously. Appeals are allowed accordingly.

(V.M. KANADE, J.)